



July 12, 2017

Ron Menor, Chair
Ikaika Anderson, Vice Chair
and Members
City Council, City and County of Honolulu
Honolulu, Hawaii 96813

**Comments, Opposition and Proposed Amendments Regarding
Bill 58, CD1 (2017) Establishing an Affordable Housing Requirement**

**Public Hearing/Second Reading
Regular Meeting of the City Council of the City and County of Honolulu
City Council Chamber, Wednesday, July 12, 2017, at 10:00 a.m.**

The Land Use Research Foundation of Hawaii ("LURF") is a statewide private, non-profit research and trade association whose members include major Hawaii landowners, developers, and a utility company. LURF's mission is to educate and advocate for reasonable, rational and equitable land use planning, legislation, and regulations that encourage well-planned economic growth and development, while safeguarding Hawai'i's significant natural and cultural resources and public health and safety.

LURF members have, and continue to include major landowners and housing developers who have successful experience building affordable housing and market housing for Hawaii residents. Since its formation in 1979, LURF has served on numerous state and county affordable housing advisory committees and task forces and its members have actively collaborated on various affordable housing policies and laws throughout the state.

LURF's Position. LURF supports efforts to provide more affordable housing and housing for all income levels, and is willing to collaborate with all housing stakeholders and government agencies to create and implement reasonable and rational policies, funding, laws, regulations and incentives that will facilitate more affordable housing and housing at all income levels. However, LURF and its members believe that Bill 58, CD1, which imposes a perpetual thirty-year restriction; deletes the options of in-lieu fees and conveyance of improved lands, imposes an 120% Area Median Income (AMI) limit requirement (which is inconsistent with the requirements of State, federal and other counties) will hinder, and not facilitate the building of more affordable and market housing inventory in Honolulu. Thus, LURF must **oppose the current version of Bill 58, CD1 (2017)**, and provides the following **comments and recommended amendments**.

LURF Comments

1. **Establish a Working Group and Collaborative Process.** The current versions of Bill 58, CD1 and Bill 59, CD1 did not involve a collaborative process or serious consideration of input from experienced housing developers. LURF respectfully recommends that the Council create a working group which would effectively engage the experienced housing developers, affordable housing advocates, government agencies and other stakeholders in a collaborative process to work on amendments to Bills 58, CD1 and 59, CD1.
2. **The City should commit to provide City lands and necessary infrastructure for affordable housing under Bill 58, CD1.** These were specific commitments in the 2017 State of the City Address. The Administration should “*Walk the Talk*” and include these commitments in Bill 58, CD1.
3. **More government restrictions, requirements and inclusionary zoning (IZ) have not worked in Hawaii, and will have the opposite effect.** As our present housing crisis proves, more government regulation and IZ ordinances like Bill 58, will not be successful in encouraging the building of more housing – in fact, such government requirements are part of the cause of the shortage of housing in Hawaii. Among others, examples of the failure of IZ requirements include:
 - The City’s repeal of its own IZ buyer income and resale restrictions from 1999 to 2005.
 - Maui County’s IZ ordinance, which was in effect from 2006 to 2014, and resulted in only three affordable units being sold to qualified low-income buyers.

In his testimony before the City Council in 2013, Dr. Carl Bonham, Executive Director of the University of Hawaii Economic Research Organization (UHERO) and Professor of Economics and the University of Hawaii at Manoa, testified as follows:

In 2010, UHERO conducted a comprehensive review of studies that analyzed IZ policies across the United States (See Bonham, Burnett, and Kato, “Inclusionary Zoning: Implications for Oahu’s Housing Market”, February 2010). Approximately 90% of the studies concluded that IZ increases the market price of housing and decreases housing units available in the market. Of the 18 studies that were able to quantify the effect of inclusionary zoning on housing market outcomes, 13 found that IZ policies both increased the market price of housing and decreased housing units available in the market, and three more studies found evidence of at least one of those effects.

UHERO’s report concluded that “Inclusionary Zoning policies have failed in other jurisdictions, and are failing on Oahu.” Such policies have not delivered substantial numbers of affordable housing units to households the programs were designed to help.

The undersupply of housing services relative to household formation on Oahu is a chronic problem. While IZ policies are politically appealing, they mistakenly tax housing to encourage more of it! The effect of a tax on the production of any product, housing included, is relatively straightforward. The extra tax imposed by IZ increases the cost to developers and limits the supply of housing provided. Facing the additional cost, developers will build fewer housing units, all else equal. In the worst case scenario, if the expected loss on the “affordable” units does not allow developers to meet their required rate of return, then projects will never get off the ground. The primary means of insuring the project is viable is to produce more upscale, higher priced homes to offset the loss on the subsidized housing. So, the IZ tax not only reduces the overall supply of housing, it also changes the mix of housing by encouraging higher end and more expensive housing developments.

(emphasis added)

4. **The proposed IZ affordable housing requirements in Bill 58, CD1 (AHR) are “infeasible” for most Oahu housing projects.** The conclusions of the City’s own Draft Financial Analysis Report prepared by Strategic Economics (See, *Affordable Housing Requirement Financial Analysis Draft Report (April 2016)*):
 - **Ala Moana High-rise condominium projects with a “Community Benefits Bonus”** are the only prototype that was found to be feasible under the proposed AHR based on current market conditions.
 - Outside of high rise projects in Ala Moana that require the CD Bonus, **condominium developments with or without the AHR** are currently not feasible in the locations tested.
 - **Kapalama, Pearl Ridge and Kapolei** projects with no subsidies and standard land and construction costs are not feasible, even without imposing AHR.
 - **Pearlridge low-rise condominiums** are not currently feasible, but may become feasible in the short- to mid-term.
 - None of the apartment prototypes tested are feasible under current market conditions, and are therefore unable to support the AHR at present.
5. **Instead of imposing IZ restrictions which have been proven not to work, and which have been evaluated as “infeasible,” this bill should confirm the City’s commitment to provide land and infrastructure, and to allow for more flexibility and “incentives.”** To increase the feasibility of, and to encourage the production of more affordable housing and housing for all income levels, Council should consider amendments: (a) confirming that the City will provide the land and infrastructure for housing developments under Bill 58, CD1; and (b) including more flexibility to satisfy any IZ requirements and additional incentives, based on the input and recommendations of experienced housing developers and housing advocates.

Summary of LURF'S Proposed Amendments to Bill 58, CD1 (2017)

1. SECTION 1:

- **AMEND** the reference to the *thirty-year* affordability restriction to apply only to "rental housing projects on government lands and/or receiving government financial assistance; and where the City has provided all necessary off-site infrastructure."
- **ADD BACK** the original reference to payment of an *in-lieu fee* or the provision of *improved land* as a way to satisfy the affordable housing requirement;
- **ADD** the provision of *unimproved land* as another alternative to satisfy the affordable housing requirement; and
- **AMEND** this section to reference the City's Draft Financial Analysis Report:

The City's own Draft Financial Analysis Report prepared by Strategic Economics (See, *Affordable Housing Requirement Financial Analysis Draft Report (April 2016)*, concluded that based on current market conditions, the affordable housing requirements proposed under this ordinance are infeasible for housing projects on Oahu, except for high-rise condominium projects with a "Community Benefits Bonus" in the Ala Moana area. Therefore, this ordinance shall be applicable to only such housing projects in the Ala Moana area which are developed on government lands and/or with government financial assistance.

With the intent to accommodate the different and weaker market areas on Oahu, where more financially viable housing development can currently occur only without the constraints of the requirement, the City will not impose requirements and restrictions on housing projects in areas outside of the Ala Moana area, unless a future financial analysis report determines that such requirements and restrictions are financially feasible.

- 2. Sec. 1.1 Purpose:** **ADD BACK** the original reference to payment of an *in-lieu fee* or the provision of *improved land* as a way to satisfy the affordable housing requirement; and **ADD** the provision of *unimproved land* as another option.

- 3. Sec. 1.3 (a) Application:** **AMEND** to clarify the application of this bill:

This chapter applies to any of the following housing projects on government lands and/or receiving government financial assistance; and where the City has provided all necessary off-site infrastructure."

4. **Sec. 1.3 (b) Application Exceptions - ADD provision to allow projects with existing housing agreements to voluntarily elect to the application of certain incentive provisions.** If the purpose of this bill is to create more affordable housing and housing for all income levels, this bill should be amended to allow projects on lands subject to existing Unilateral Agreements, development agreements and other previously recorded agreements to also voluntarily elect to the application of certain incentive provisions in Bill 58, CD1. Many of the already entitled housing projects on Oahu are already “vested” with their Land use Commission and City zoning approvals and unilateral agreements (most of the projects in Ewa, Ho’opili, Koa Ridge, etc.), such projects may also be competing with new projects under Bill 58, CD1 and Bill 59, CD1 and should also be able to take advantage of the flexibility of options, including, but not limited to: sliding scale of total units required, providing rental housing, off-site production, in-lieu fees, dedication of land, etc.
5. **Sec. 1.4 Table Affordable Housing Requirements**
 - **AMEND the *proposed* 120% AMI upper income limit for Affordable Housing qualifications, and RETAIN the 140% AMI requirements.** HUD, HCDA and HHFDC, and all other counties are using 140% AMI. Changing the qualifications to 120% will mean that residents earning between 120% - 140% AMI can no longer qualify for City affordable housing, disqualifying those residents who may best be able to qualify for housing loans.
 - **ADD BACK** the original options relating to payment of an in-lieu fee or the provision of improved land as a way to satisfy the affordable housing requirement; and **ADD** the provision of *unimproved land* as another alternative to satisfy the affordable housing requirement; and
6. **Sec. 1.4 Table Off-Site Production – CLARIFY that AH units located within the same TOD Zone of the same Neighborhood Plan qualify as “On-Site” units.**
7. **Sec. 1.4 Table Off-Site Production – allow incentive for production of new housing in transit station areas or areas of need.** Rather than a mandatory 25 percent “penalty” for building off-site, **AMEND** this section to allow a 20 percent off-site dwelling unit requirement, if off-site units are within a rail transit station area or other “area of need,” as approved by the Planning Director.
8. **Original Sec. 1.4(c) In Lieu Fees – ADD BACK in-lieu fees in the original section (c), with the following amendments:**
 - **AMEND amount of in-lieu fees.** The council should consult with experienced housing developers and housing agencies to determine a reasonable in-lieu fee amount that could provide funding to create more affordable housing units.

- **DELETE Council approval requirement for 25 units or more and allow DPP Director to approve all in-lieu fees.**
 - **Sec. 1.4 In Lieu Fees – ADD requirement that all in-lieu fees be deposited into the Affordable housing development account.**
9. **Original Sec. 1.4 Land – ADD BACK original section (d), allowing the conveyance of improved land; and ADD the option to convey “unimproved real property” with appraised value equal to the in-lieu fee.**
10. **Sec. 1.5 – Period of Affordability - DELETE the *proposed* thirty-year IZ restrictions for For-Sale units and retain the current ten-year requirements.** LURF supports the new State legislation allowing non-profit trusts to buy-back and resell affordable units, which would retain more affordable units. However, history has proven that even a ten-year IZ restriction has not worked in Honolulu, as first time buyers will choose to purchase other housing without IZ requirements (City waived its own IZ requirements from 1999 to 2005). Moreover, these restrictions “hold hostage” homeowners to remain in affordable housing by limiting the amount of equity that a first-time homeowner can earn and use to “move-up the housing ladder.” **Also DELETE what appears to be “in perpetuity reset” provisions which impose an additional thirty-year IZ restriction for the resale of For-Sale units.**
11. **Original Sec. 1.6 – Affordable housing development account – ADD BACK original provisions, and renumber subsequent sections.** This account will be the repository for in-lieu fees, and could be the source of gap funding or loans for other affordable housing projects.
12. **Sec. 1.11 Rules – Add New provisions for periodic review and assessment of AH IZ ordinance.**
- New Provision: Require rules to include goals, objectives, and performance criteria to assess the effectiveness of the AH ordinance.
 - New Provision: Require Administration/Council review of the AH ordinance every two years, review shall include an assessment of the effectiveness of the AH ordinance.

Conclusion. Thus, based on the above, we respectfully urge the City Council to favorably consider LURF’s above-referenced proposed amendments to Bill 58, CD1 (2017); and to convene a working group to work on and propose further amendments to Bills 58 and 59.

We appreciate the opportunity to provide comments on this matter. Should you have any questions, please feel free to contact us at (808) 521-4717 or via e-mail at darakawa@lurf.org.